HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1348 of 2006

-
-

Between:

S.G.Rao ……Appellant.

And

Depot Maager, APSRTC,
Gajuwaka Bus Depot,
Visakhapatam and others.

……
Respondents.

:: J U D G M E N T ::

Counsel for the appellant : None

Counsel for respondent Nos.1 and 2 : Sri V.Padmanabha Rao
for Ms.B.G.Uma Devi.

28th December, 2006

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 3-4-2006 passed by the learned Single Judge in Writ Petition No.10562 of 2005, whereby

he declined to interfere with award dated 14-11-2003 passed by the Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam (respondent No. 3) in I.D.No.111 of 2001.

Since no one has appeared for the appellant, we have no option but to presume that he and his advocate are not interested in prosecuting the appeal and the same is liable to be dismissed in default.

Even on merits, we are convinced that the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the award passed by respondent No. 3. The appellant joined service of the Corporation as a casual worker on 17-05-1990. Subsequently, his services were regularised and he was appointed as Conductor. While he was performing duty on 17-05-1995 on bus No. AAZ 9579, the appellant and driver of the bus took one of the passengers to Gajuwaka Bus Depot on the pretext that he did not follow the instructions of the appellant and gave him beating. As a result, the passenger suffered injuries. This incident led to initiation of departmental enquiry. The enquiry officer relied on statement dated 18-5-1985 made by the appellant, which was marked as Ex. M-5 in the proceedings held by respondent No. 3 and concluded that the charge is proved against the delinquent. The disciplinary authority accepted the findings of the Enquiry Officer and imposed penalty of deferment on one annual increment of the appellant for a period of two years with cumulative effect besides treating the suspension period as not spent on duty. The industrial dispute raised by the appellant was decided by respondent No. 3 vide award dated
14-11-2003. He approved the finding of guilty recorded by the enquiry officer and the punishment of stoppage of increment for a period of two years with cumulative effect but declared that the period of suspension

shall be treated as spent on duty.

The learned Single Judge referred to the well recognised parameters for exercise of High Court's power of judicial review and held that the award passed by respondent No. 3 does not suffer from any legal infirmity.

It is borne out from the record that only two points were argued before the learned Single Judge. The first was that the punishment imposed by the employer was arbitrary and unjust and the second was that in view of his acquittal in Criminal Case No. 414 of 1995, the disciplinary authority could not have punished the appellant. The learned Single Judge answered both the points in negative by assigning the following reasons:

> "The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. In the departmental enquiry, the Enquiry Officer, on consideration of the statements and evidence of the petitioner, passengers and officials of the APSRTC, held that the charges levelled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of deferment of annual increment for a period of two years with cumulative effect and treating the suspension period as not on duty. The Labour Court, on re-appreciation of the entire material on record, observed that on account of the attitude of the workman, the image of the Corporation has gone down in the public and he also caused loss to the Corporation to an extent of Rs.200/-. Therefore, the Labour Court, while observing that the punishment of deferment of annual increment of the workman for a period of two years with cumulative effect is reasonable where as the punishment for treating the suspension period as not on duty is not justified, confirmed the punishment of deferment of annual increment of the workman for a period of two years with cumulative effect and set aside the punishment of treating the suspension period as not on duty. Had the Labour Court held that the charges levelled against the petitioner are not proved, then the petitioner

would have been justified in contending that the punishment imposed is disproportionate to the proved misconduct, but that is not the case. The Labour Court, having held that the charges levelled against the petitioner are proved, has taken a lenient view and modified the punishment as aforesaid.

The further contention of the petitioner is that against the same charges, the Criminal Court, vide orders passed in C.C.No. 414 of 1995, acquitted the petitioner on the ground that the charges levelled against him are not proved, and that the Labour Court has not considered the said order passed by the Criminal Court, therefore, the award passed by the Labour Court be set aside to the extent it confirmed the punishment of deferment of annual increment for a period of two years with cumulative effect. I am unable to accept the said contention. A perusal of the Labour Court award clearly shows that the petitioner has not produced the copy of the criminal court judgment before the Labour Court. However, mere acquittal of the petitioner by the Criminal Court does not automatically give him the right to set aside the punishment awarded. Before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the Criminal Court."

In our opinion, the appellant's acquittal in Criminal Case No.414 of 1995 did not have the effect of wiping the allegation levelled against him and the competent authority did not commit any illegality by holding enquiry and passing the order of punishment. The nature of the criminal proceedings instituted in the court and the departmental enquiry are substantially different and acquittal in the criminal case cannot, by itself, be made the basis for nullifying the order of punishment issued by the employer after holding a regular enquiry unless it is shown that the substratum of the allegation constituting the

subject matter of the criminal case and the departmental enquiry is the same and the evidence produced in the departmental enquiry is similar to the one adduced in the criminal case. This view of ours is based on the judgments of the Supreme Court in **R.P.Kapur v. Union of India**[1], **Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G.Modak**[2], **Anil Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Limited, Haldia**[3], **Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya**[4], **State of Rajasthan v. B.K. Meena**[5] and **Kendriya Vidyalaya Sangathan v. T. Srinivas**[6]**.** The aforementioned judgments were considered by the Division Bench in Writ Appeal No.1076 of 2005 – **Depot Manager, APSRTC, Parvathipuram and others v. D. Vykunta Rao and another** decided on 16-6-2006, and it was held that the order of punishment passed by the competent authority after holding regular departmental enquiry cannot be annulled only on the ground that the delinquent was acquitted in the criminal case.

In view of the above, we express our total agreement with the learned Single Judge that award dated 14-11-2003 passed by the Industrial Tribunal did not suffer from any jurisdictional infirmity or error of law apparent on the face of the record, which could justify interference by this Court under Article 226 of the Constitution of India.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.2860 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

28th December, 2006

C.V.NAGARJUNA REDDY, J.

ARS

---

[1] AIR 1964 SC 787

[2] AIR 1984 SC 626

[3] JT 2005(8) SC 425

[4] AIR 1997 SC 2232

[5] (1996) 7 SCC 417

[6] (2004) 7 SCC 442